

House Study Bill 195 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

A BILL FOR

- 1 An Act relating to workers' compensation benefits.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 85.16, subsection 2, Code 2013, is
2 amended to read as follows:

3 2. a. By the employee's intoxication, which did not arise
4 out of and in the course of employment but which was due
5 to the effects of alcohol or another narcotic, depressant,
6 stimulant, hallucinogenic, or hypnotic drug not prescribed by
7 an authorized medical practitioner, if the intoxication was a
8 substantial factor in causing the injury.

9 b. For the purpose of disallowing compensation under this
10 subsection, the following applies:

11 (1) If the employer shows that, at the time of the injury
12 or immediately following the injury, the employee had positive
13 test results reflecting the presence of alcohol, or another
14 narcotic, depressant, stimulant, hallucinogenic, or hypnotic
15 drug, which drug either was not prescribed by an authorized
16 medical practitioner or was not used in accordance with the
17 prescribed use of the drug, it shall be presumed that the
18 employee was intoxicated at the time of the injury and that
19 intoxication was a substantial factor in causing the injury.

20 (2) Once the employer has made a showing as provided
21 in subparagraph (1), the burden of proof shall be on the
22 employee to establish that the employee was not intoxicated
23 at the time of the injury, or that intoxication was not a
24 substantial factor in causing the injury, in order to overcome
25 the presumption.

26 Sec. 2. Section 85.23, Code 2013, is amended to read as
27 follows:

28 **85.23 Notice of injury — failure to give.**

29 Unless the employer or the employer's representative shall
30 have actual knowledge of the occurrence of an injury received
31 within ninety days from the date of the occurrence of the
32 injury, or unless the employee or someone on the employee's
33 behalf or a dependent or someone on the dependent's behalf
34 shall give notice thereof to the employer within ninety days
35 from the date of the occurrence of the injury, no compensation

1 shall be allowed. For the purposes of this section, "date of
2 the occurrence of the injury" means the date that the employee
3 knew or should have known that the injury was work-related.

4 Sec. 3. Section 85.26, subsection 1, Code 2013, is amended
5 to read as follows:

6 1. An original proceeding for benefits under this chapter
7 or chapter 85A, 85B, or 86, shall not be maintained in any
8 contested case unless the proceeding is commenced within two
9 years from the date of the occurrence of the injury for which
10 benefits are claimed or, if weekly compensation benefits are
11 paid under section 86.13, within three years from the date of
12 the last payment of weekly compensation benefits. For the
13 purposes of this subsection, "date of the occurrence of the
14 injury" means the date that the employee knew or should have
15 known that the injury was work-related.

16 Sec. 4. Section 85.27, subsection 2, Code 2013, is amended
17 to read as follows:

18 2. a. Any employee, employer or insurance carrier making
19 or defending a claim for benefits agrees to the release of all
20 information to which the employee, employer, or carrier has
21 access concerning the employee's physical or mental condition
22 relative to the claim and further waives any privilege for the
23 release of the information. The information shall be made
24 available to any party or the party's representative upon
25 request. Any institution or person releasing the information
26 to a party or the party's representative shall not be liable
27 criminally or for civil damages by reason of the release of
28 the information. If release of information is refused the
29 party requesting the information may apply to the workers'
30 compensation commissioner for relief. The information
31 requested shall be submitted to the workers' compensation
32 commissioner who shall determine the relevance and materiality
33 of the information to the claim and enter an order accordingly.
34 b. For the purposes of this subsection, information
35 concerning surveillance conducted of an employee or the written

1 or electronic record of such surveillance does not constitute
2 information that is subject to the requirements of paragraph
3 "a". Information concerning surveillance of an employee or
4 the written or electronic record of such surveillance is
5 not required to be made available to a party or the party's
6 representative until ten days after the information or record
7 of surveillance is made available to a medical provider or
8 expert for consideration in the treatment or evaluation of the
9 employee or until twenty days before hearing, if the party
10 possessing the information or record of surveillance intends to
11 introduce the information or record of surveillance as evidence
12 at hearing.

13 Sec. 5. Section 85.34, subsection 2, paragraph u, Code 2013,
14 is amended to read as follows:

15 u. In all cases of permanent partial disability other than
16 those hereinabove described or referred to in paragraphs "a"
17 through "t" hereof, the compensation shall be paid during
18 the number of weeks in relation to five hundred weeks as the
19 reduction in the employee's earning capacity caused by the
20 disability bears in relation to the earning capacity that the
21 employee possessed when the injury occurred. A determination
22 of the reduction in the employee's earning capacity caused by
23 the disability shall take into account the permanent partial
24 disability of the employee and the number of future years
25 reasonably anticipated that the employee would work at the time
26 of the injury. If an employee who is eligible for benefits
27 under this paragraph returns to work or is offered work for
28 which the employee receives or would receive the same or
29 greater salary, wages, or earnings than the employee received
30 at the time of the injury, the employee shall be compensated
31 only based upon the employee's functional disability resulting
32 from the injury, and not in relation to the employee's earning
33 capacity.

34 Sec. 6. Section 85.34, subsection 3, Code 2013, is amended
35 by adding the following new paragraph:

1 NEW PARAGRAPH. *c.* An employee shall not be awarded
2 compensation for permanent total disability under this
3 subsection if the employee is receiving a salary, wages, or
4 earnings from an employer, payments for services rendered
5 by the employee, payments representing the employee's share
6 of profits of a privately held corporation, or unemployment
7 compensation benefits.

8 Sec. 7. Section 85.34, subsection 5, Code 2013, is amended
9 to read as follows:

10 5. *Recovery of employee overpayment.* If an employee is paid
11 any weekly benefits for an injury in excess of that required
12 by this chapter and chapters 85A, 85B, and 86, the excess paid
13 by the employer shall be credited first against the liability
14 of the employer for any future weekly benefits due pursuant to
15 subsection 2, for a that injury, and then for any future weekly
16 benefits due pursuant to subsection 2 for subsequent injury
17 to the same employee. An overpayment can be established only
18 when the overpayment is recognized in a settlement agreement
19 approved under section 86.13, pursuant to final agency action
20 in a contested case which was commenced within three years from
21 the date that weekly benefits were last paid for the claim
22 for which the benefits were overpaid, or pursuant to final
23 agency action in a contested case for a prior injury to the
24 same employee. The credit shall remain available for eight
25 years after the date the overpayment was established. If an
26 overpayment is established pursuant to this subsection, the
27 employee and employer may enter into a written settlement
28 agreement providing for the repayment by the employee of the
29 overpayment. The agreement is subject to the approval of the
30 workers' compensation commissioner. The employer shall not
31 take any adverse action against the employee for failing to
32 agree to such a written settlement agreement.

33 Sec. 8. Section 85.34, subsection 7, Code 2013, is amended
34 by striking the subsection and inserting in lieu thereof the
35 following:

1 7. *Successive disabilities.* An employer is liable for
2 compensating only that portion of an employee's disability that
3 arises out of and in the course of the employee's employment
4 with the employer and that relates specifically to the injury,
5 event, or activity that is the basis for the employee's
6 claim for benefits under this chapter or chapter 85A or 85B.
7 An employer is not liable for compensating an employee's
8 preexisting disability that arose out of and in the course of
9 employment with a different employer, from a prior injury with
10 the same employer to the extent that the employee's preexisting
11 disability has already been compensated under this chapter or
12 chapter 85A or 85B, or from causes unrelated to employment.

13 Sec. 9. Section 85.45, subsection 1, unnumbered paragraph
14 1, Code 2013, is amended to read as follows:

15 Future payments of compensation may be commuted to a present
16 worth lump sum payment only upon application of a party and
17 upon written consent of all parties to the proposed commutation
18 and on the following conditions:

19 Sec. 10. Section 85.61, subsection 7, unnumbered paragraph
20 1, Code 2013, is amended to read as follows:

21 The words "*personal injury arising out of and in the course*
22 *of the employment*" shall include injuries to employees whose
23 services are being performed on, in, or about the premises
24 which are occupied, used, or controlled by the employer, and
25 also injuries to those who are engaged elsewhere in places
26 where their employer's business requires their presence and
27 subjects them to dangers incident to the business. For the
28 purposes of this subsection, an injury arises out of and in the
29 course of employment only when the employee's work activities
30 are found to be a substantial factor in causing the injury.

31 Sec. 11. Section 85.71, subsection 1, paragraph a, Code
32 2013, is amended to read as follows:

33 a. The employer has a place of business in this state and
34 the employee regularly works at or from that place of business,
35 ~~or the employer has a place of business in this state and the~~

1 ~~employee is domiciled in this state.~~

2 Sec. 12. Section 86.26, Code 2013, is amended to read as
3 follows:

4 **86.26 Judicial review — stay — bond required.**

5 1. Judicial review of decisions or orders of the workers'
6 compensation commissioner may be sought in accordance
7 with chapter 17A. Notwithstanding chapter 17A, the Iowa
8 administrative procedure Act, petitions for judicial review
9 may be filed in the district court of the county in which the
10 hearing under section 86.17 was held, the workers' compensation
11 commissioner shall transmit to the reviewing court the original
12 or a certified copy of the entire record of the contested case
13 which is the subject of the petition within thirty days after
14 receiving written notice from the party filing the petition
15 that a petition for judicial review has been filed, and an
16 application for stay of agency action during the pendency of
17 judicial review shall not be filed in the division of workers'
18 compensation of the department of workforce development
19 but shall be filed with the district court. Such a review
20 proceeding shall be accorded priority over other matters
21 pending before the district court.

22 2. Notwithstanding section 17A.19, subsection 5, a timely
23 petition for judicial review filed pursuant to this section
24 shall stay execution or enforcement of a decision or order of
25 the workers' compensation commissioner if the party seeking
26 judicial review posts a bond securing the award with the
27 district court within thirty days of filing the petition, in a
28 reasonable amount as the court shall fix and approve. Unless
29 the party posting the bond objects within twenty days from
30 the posting of the bond that the amount of the bond is not
31 reasonable or the party whose interests are protected by the
32 bond objects within twenty days from the posting of the bond to
33 the amount of the bond by filing an objection with the district
34 court, the amount of the bond shall be deemed reasonable and
35 adequate. If, upon objection, the district court orders the

1 amount of the bond to be modified, the party seeking judicial
2 review shall repost the bond in the amount ordered within
3 twenty days of the date of the order modifying the bond, to
4 continue the stay of execution or enforcement of the decision
5 or order.

6 Sec. 13. Section 86.42, Code 2013, is amended to read as
7 follows:

8 **86.42 Judgment by district court on award.**

9 Any party in interest may present a file-stamped copy
10 of an order or decision of the commissioner, from which a
11 timely petition for judicial review has not been filed or if
12 judicial review has been filed, which has not had execution or
13 enforcement stayed as provided in section ~~17A.19, subsection~~
14 ~~5~~ 86.26, subsection 2, or an order or decision of a deputy
15 commissioner from which a timely appeal has not been taken
16 within the agency and which has become final by the passage of
17 time as provided by rule and section 17A.15, or an agreement
18 for settlement approved by the commissioner, and all papers
19 in connection therewith, to the district court where judicial
20 review of the agency action may be commenced. The court shall
21 render a decree or judgment and cause the clerk to notify the
22 parties. The decree or judgment, in the absence of a petition
23 for judicial review or if judicial review has been commenced,
24 in the absence of a stay of execution or enforcement of the
25 decision or order of the workers' compensation commissioner
26 as provided in section 86.26, subsection 2, or in the absence
27 of an act of any party which prevents a decision of a deputy
28 workers' compensation commissioner from becoming final, has the
29 same effect and in all proceedings in relation thereto is the
30 same as though rendered in a suit duly heard and determined by
31 the court.

32 EXPLANATION

33 This bill makes various changes to laws relating to workers'
34 compensation benefits and procedures.

35 Code section 85.16(2) is amended to include a presumption

1 that an employee was intoxicated at the time of an injury and
2 that intoxication was a substantial factor in causing the
3 injury, if the employer demonstrates that the employee had
4 positive test results at the time of the injury, or immediately
5 after the injury, reflecting the presence of alcohol or
6 drugs that were either not prescribed by an authorized
7 medical practitioner, or were not used in accordance with the
8 prescribed use of the drug. Once the employer makes such
9 a showing, the burden of proof shifts to the employee to
10 establish that the employee was not intoxicated at the time of
11 the injury or that intoxication was not a substantial factor
12 in causing the injury.

13 Code section 85.23 is amended to provide that for purposes of
14 the requirement that an employee notify the employer within 90
15 days from the date of the occurrence of an injury, "date of the
16 occurrence of the injury" means the date that the employee knew
17 or should have known that the injury was work-related.

18 Code section 85.26(1) is amended to provide that for
19 purposes of the requirement that an original proceeding for
20 workers' compensation benefits must be commenced within two
21 years from the date of the occurrence of the injury, "date of
22 the occurrence of the injury" means the date that the employee
23 knew or should have known that the injury was work-related.

24 Code section 85.27(2) is amended to provide that information
25 concerning surveillance conducted of an employee or the written
26 or electronic record of such surveillance does not constitute
27 information concerning the employee's physical or mental
28 condition that must be released upon request to any party
29 as currently required. Information concerning surveillance
30 or the written or electronic record of surveillance is not
31 required to be made available to a party until 10 days after
32 the information or record of surveillance is made available
33 to a medical provider or expert for consideration in the
34 treatment or evaluation of the employee or until 20 days before
35 hearing, if the party possessing the information or record of

1 surveillance intends to introduce the information or record as
2 evidence at hearing.

3 Code section 85.34(2)(u), relating to compensation of an
4 employee who has permanent partial disability of the body
5 as a whole, requires a determination of the reduction in
6 the employee's earning capacity caused by the disability in
7 relation to the earning capacity that the employee possessed
8 when the injury occurred. This provision is amended to provide
9 that a determination of the reduction in the employee's earning
10 capacity caused by the disability must take into account the
11 permanent partial disability of the employee and the number of
12 years it was reasonably anticipated that the employee would
13 continue to work at the time of the injury. If an employee who
14 is eligible for benefits under this provision returns to work
15 or is offered work for which the employee receives or would
16 receive the same or greater salary, wages, or earnings than
17 the employee received at the time of the injury, the employee
18 shall be compensated only based upon the employee's functional
19 disability resulting from the injury, and not in relation to
20 the employee's earning capacity.

21 Code section 85.34(3), relating to compensation for an
22 injury causing total disability, is amended to provide that
23 an employee shall not be awarded compensation for permanent
24 total disability if the employee is receiving a salary, wages,
25 or earnings from an employer, payments for services rendered
26 by the employee, payments representing the employee's share
27 of profits of a privately held corporation, or unemployment
28 compensation benefits.

29 Code section 85.34(5) is amended to provide that if an
30 employee is paid any weekly benefits for an injury in excess of
31 that required by the workers' compensation law, the excess paid
32 by the employer shall be credited first against the liability
33 of the employer for any future weekly benefits due for that
34 injury, and then for any future weekly benefits due for any
35 subsequent injury to the same employee.

1 Code section 85.34(7) is amended to provide that in
2 the case of successive disabilities of an employee, an
3 employer is liable for compensating only that portion of the
4 employee's disability that arises out of and in the course
5 of the employee's employment with the employer and relates
6 specifically to the injury, event, or accident that is the
7 basis for the employee's claim for benefits. An employer
8 is not liable for compensating an employee's preexisting
9 disability that arose out of and in the course of employment
10 with a different employer, from a prior injury with the
11 same employer to the extent that the preexisting disability
12 has already been compensated, or for causes unrelated to
13 employment.

14 Code section 85.45(1) is amended to provide that future
15 payments of compensation may be commuted to a present worth
16 lump sum payment only upon application of a party and upon
17 written consent of all parties to the proposed commutation as
18 well as upon a finding of specified conditions.

19 Code section 85.61(7), which defines the words "personal
20 injury arising out of and in the course of the employment", is
21 amended to include that, for purposes of this definition, an
22 injury arises out of and in the course of employment only when
23 the employee's work activities are found to be a substantial
24 factor in causing the injury.

25 Code section 85.71 is amended to provide that Iowa workers'
26 compensation law is not applicable when an employee is injured
27 while working outside the state for an employer who has a place
28 of business in this state and the employee domiciled in this
29 state.

30 Code section 86.26 is amended to provide that
31 notwithstanding the procedures for staying the execution or
32 enforcement of an agency action contained in Code chapter 17A,
33 the administrative procedures Act, the filing of a petition
34 for judicial review of a decision or order of the workers'
35 compensation commissioner stays such execution or enforcement

1 if the party seeking judicial review posts a bond securing the
2 award with the district court within 30 days of the filing
3 in a reasonable amount as the court shall fix and approve.
4 Unless the party posting the bond objects within 20 days that
5 the amount of the bond is not reasonable or the party whose
6 interests are protected by the bond objects within 20 days to
7 the amount of the bond, the bond shall be deemed reasonable
8 and adequate. If, upon objection, the district court modifies
9 the amount of the bond, the party seeking judicial review
10 shall repost the bond in the amount ordered within 20 days of
11 the date of the modification order, to continue the stay of
12 execution or enforcement.

13 Code section 86.42 is amended to provide that a party in
14 interest cannot obtain a judgment by the district court on an
15 award of workers' compensation benefits contained in a decision
16 or order if a petition for judicial review has been filed and
17 there is a stay of execution or enforcement as provided in Code
18 section 86.26.